IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

JERRY VENABLE REVOCABLE FAMILY TRUST, on behalf of itself and others similarly situated, Plaintiff, vs. CHESAPEAKE OPERATING, LLC, Defendant.	Case No. CIV-16-782-M

JOINT STATUS REPORT AND DISCOVERY PLAN

Date of Rule 26(f) Conference: October 21, 2016
Date of Scheduling Conference: October 31, 2016

Appearing for Plaintiff, Venable:

Rex A. Sharp OBA#011990
REX SHARP, P.A.
5301 W. 75th Street
Prairie Village, KS 66208
(913) 901-0500
(913) 901-0419 fax
rsharp@midwest-law.com

Michael E. Grant, OBA#11848
GRANT LAW FIRM, P.L.L.C.
At the Midtown Law Center
512 N.W. 12th Street
Oklahoma City, OK 73103
(405) 232-6357
(405) 232-6358 fax
de1471@coxinet.net

Name of contact for Plaintiff: Jerry Venable
Counsel will have Mr. Venable's phone number at the status conference in the event it is needed

Appearing for Defendant, Chesapeake Operating, LLC:

Timothy J. Bomhoff, OBA # 133172
Laura J. Long, OBA #22215
Patrick L. Stein, OBA #30737
MCAFEE & TAFT A Professional Corporation
Tenth Floor, Two Leadership Square
211 N. Robinson
Oklahoma City, OK 73102-7103
Telephone: 405.235.9621
Facsimile: 405.235.0439
tim.bomhoff@mcafeetaft.com
laura.long@mcafeetaft.com
patrick.stein@mcafeetaft.com

- and –

Greg W. Curry, OBA #16791
Craig A. Haynes, TX Bar #09284020
(admitted *pro hac vice*)
Rachelle H. Glazer, TX Bar #09785900
(admitted *pro hac vice*)
Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, TX 75201
Telephone: 214.969.1700
Facsimile: 214.9691751
greg.curry@tklaw.com
craig.haynes @tklaw.com
rachelle.glazer@tklaw.com

Name of Representative for Defendants: Fred Gipson
Counsel will have Mr. Gipson’s phone number at the status conference in the event it is needed.

JURY TRIAL DEMANDED ___X____ NON-JURY TRIAL _____

1. BRIEF PRELIMINARY STATEMENT.

Chesapeake operates oil and gas wells and markets production attributable to operating and non-operating interests in wells located within the State of Oklahoma and pays royalty to Plaintiff and the putative class. Plaintiff is a royalty owner in an oil and gas well operated by Chesapeake. Plaintiff brought this action as the representative of a putative Class of royalty owners who are Oklahoma Residents or Texas Residents (as defined by a four part test appearing in the class definition) pursuant to Fed. R. Civ. P. 23 (a) and (b)(3).

Plaintiff claims that Chesapeake improperly reduced royalty owner revenue by charging Oklahoma royalty owners for midstream service fees and volumetric reductions associated with gathering, compression, dehydration, treating, and processing ("GCDTP") services in violation of Oklahoma law. Plaintiff purports to bring these claims on behalf of himself and a class of all other persons similarly situated, namely Oklahoma Residents or Texas Residents.

Chesapeake denies Plaintiff's claims for Breach of Lease, Breach of Fiduciary Duty, Fraud, Deceit and Constructive Fraud. Chesapeake further contends that it has remitted royalties owed Plaintiff and does not owe any additional royalty payments to Plaintiff or other purported class members.

2. JURISDICTION.

This case was removed from state court. Defendant contends jurisdiction exists under the Class Action Fairness Act, 28 U.S.C. § 1332(d) and 28 U.S.C. § 1453. Plaintiff has moved the Court to abstain from hearing the case under CAFA and has asked that the case be returned to Oklahoma state court. Docket no. 19. The Court has granted jurisdictional discovery and stayed the proceedings pending that discovery. Docket no. 28.

3. STIPULATED FACTS.

a. Chesapeake is a limited liability company organized under the state laws of Oklahoma, with its principal place of business in Oklahoma City, Oklahoma.

b. Chesapeake is an operator of certain oil and gas wells within the State of Oklahoma.

c. For purposes of diversity jurisdiction under CAFA, Chesapeake Operating, LLC is a citizen of Oklahoma.

d. Plaintiff has interests in some wells in Oklahoma that are operated by Chesapeake. [Answer, docket no. 3, ¶2].

e. The number of Class members of the proposed plaintiff class exceeds 100.

4. CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.

A. **Plaintiff**:

1. Plaintiff contends that under Oklahoma law a royalty owner bears no costs related to transforming raw gas into marketable condition (the GCDTP Services costs mentioned above) absent specific language in the oil and gas lease authorizing the lessee to deduct the specific cost from the royalty.
2. Plaintiff contends that Chesapeake knowingly made improper payment of royalties to the Class because Chesapeake knew it or those that it hired were deducting GCDTP service costs from revenues used to pay royalty owners.
3. Chesapeake pays royalty on the net gas contract value, not the gross value of the valuable constituents taken from Class Wells.
4. Plaintiff, after discovery, will satisfy all of the requirements for class certification and to prevail on the merits. *See also* more complete contentions and relief in the Petition (docket no. 1-1).

B. Defendant:

1. Chesapeake denies Plaintiff's claims and contentions.
2. Chesapeake asserts it has properly calculated and paid royalty to Plaintiff and the proposed class members.
3. Chesapeake asserts the Court has jurisdiction under CAFA and that removal was proper.
4. Chesapeake asserts that Plaintiff's claims may be barred in whole or in part by the affirmative or other defenses set forth in Chesapeake's Answer [Doc. #3].

5. APPLICABILITY OF FED. R. CIV. P. 5.1 AND COMPLIANCE.

This case contains no constitutional challenge to a statute so Fed. R. Civ. P. 5.1 does not apply.

6. MOTIONS PENDING AND/OR ANTICIPATED.

a. See Proposed Scheduling Order Attached.

7. COMPLIANCE WITH RULE 26(A)(1).

The parties propose the Court first rule upon Plaintiff's motion to abstain before initial disclosures are required. Because jurisdiction is a threshold issue, the Court should first determine abstention from exercising jurisdiction before proceeding to other matters.

If the Court's ruling on interlocutory appeal is that jurisdiction exists and mandatory or discretionary abstention do not apply, then the parties propose they exchange Initial Disclosures under Fed. R. Civ. P. 26(A)(1) no later than sixty (60) days after the Court's order ruling Plaintiff's motion to abstain. Initial disclosures due at this time shall be limited to only those matters relevant to class certification, which includes overlapping merits issues.

8. PLAN FOR DISCOVERY

A. The discovery planning conference (Fed. R. Civ. P. 26(f)) was held on Friday, October 21, 2016.

B. The parties propose the attached scheduling order, and the parties propose that the Court defer any further scheduling until after the Court rules on Plaintiff's Motion for Abstention as its Order [docket no. 28] directs.

C. In the event ADR is ordered or agreed to, what is the minimum amount of time necessary to complete necessary discovery prior to the ADR session? ADR is not appropriate at this time.

D. Have the parties discussed issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced, pursuant to Fed. R. Civ. P. 26(f)(3)(C)? Yes.

E. Have the parties discussed issues relating to claims of privilege or of protection as trial-preparation material pursuant to Fed. R. Civ. P. 26(f)(3)(D)? Yes.

To the extent the parties have made any agreements pursuant to Fed. R. Civ. P. 26(f)(3)(D) and Fed. R. Civ. P. 502(e) regarding a procedure to assert claims of privilege/protection after production and are requesting that the court include such agreement in an order, please set forth the agreement in detail below and submit a proposed order adopting the same.

The parties are conferring on an Agreed Protective Order.

F. Identify any other discovery issues which should be addressed at the scheduling conference, including any subjects of discovery, limitations on discovery, protective orders needed, or other elements (Fed. R. Civ. P. 26(f)) which should be included in a particularized discovery plan.

None.

9. ESTIMATED TRIAL TIME.

The parties request that scheduling for trial be postponed until after the Court rules upon Plaintiff's motion to abstain, and, if the court retains the case, until after class certification has been decided.

10. BIFURCATION REQUESTED:

The parties agree that the Court should resolve the issues of mandatory and discretionary abstention before proceeding to schedule class certification and a trial on the merits.

11. POSSIBILITY OF SETTLEMENT: Poor.

12. SETTLEMENT AND ADR PROCEDURES:

A. Compliance with LCvR 16.1(a)(1)—ADR discussion: Yes.

B. The parties request that this case be referred to the following ADR process: The parties request that ADR with a neutral third party experienced in oil and gas matters be scheduled only after class certification issues have been resolved.

13. PARTIES CONSENT TO TRIAL BY MAGISTRATE JUDGE?

Plaintiff consents to trial by magistrate judge. Defendant does not consent to trial by a magistrate judge.

14. TYPE OF SCHEDULING ORDER REQUESTED.

Specialized, in accordance with item 6, above. Proposed Scheduling Order is attached.

Submitted this 25th day of October 2016.

/s/ *Rex A. Sharp*

Rex A. Sharp OBA#011990
Rex A. Sharp, P.A.
5301 W. 75th Street
Prairie Village, KS 66208
(913) 901-0500
(913) 901-0419 fax
rsharp@midwest-law.com

Michael E. Grant, OBA#11848
GRANT LAW FIRM, P.L.L.C.
At the Midtown Law Center
512 N.W. 12th Street
Oklahoma City, OK 73103
(405) 232-6357
(405) 232-6358 fax
de1471@coxinet.net

ATTORNEYS FOR PLAINTIFF

/s/ Timothy J. Bomhoff
(signed by filing attorney with permission)

Timothy J. Bomhoff, OBA # 133172
Laura J. Long, OBA #22215
Patrick L. Stein, OBA #30737
MCAFEE & TAFT A Professional Corporation
Tenth Floor, Two Leadership Square
211 N. Robinson
Oklahoma City, OK 73102-7103
Telephone: 405.235.9621
Facsimile: 405.235.0439
tim.bomhoff@mcafeetaft.com
patrick.stein@mcafeetaft.com

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Greg W. Curry, OBA #16791
Craig A. Haynes, TX Bar #09284020
(admitted *pro hac vice*)
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(admitted *pro hac vice*)
Thompson & Knight LLP
1722 Routh Street, Suite 1500
Dallas, TX 75201
Telephone: 214.969.1700
Facsimile: 214.9691751
greg.curry@tklaw.com
craig.haynes @tklaw.com
rachelle.glazer@tklaw.com

ATTORNEYS FOR DEFENDANT

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[PROPOSED] SCHEDULING ORDER

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This scheduling order address the discovery and briefing related to CAFA's mandatory abstention provisions per this Court's Order (docket no. 28). All further proceedings are stayed until after the Court rules Plaintiff's Motion for Abstention. With this context, the parties have agreed to this order and, there being good cause,

IT IS HEREBY ORDERED pursuant to Fed. R. Civ. P. 16 that the deadlines described below shall control until a ruling on the Plaintiff's Motion for Abstention.

Event	Proposed Schedule
Completion of discovery regarding CAFA's mandatory abstention provisions	February 28, 2017
Plaintiff's motion to abstain	March 17, 2017
Defendant's response to Plaintiff's motion to abstain	April 14, 2017

Plaintiff's reply to Defendant's response to Plaintiff's motion to abstain	April 28, 2017

If the Court denies Plaintiff's Motion to Abstain, the Court will enter separate scheduling orders for class certification and, thereafter, if warranted, for a trial on the merits.

IT IS SO ORDERED.

Dated this ____ day of October, 2016.

____
VICKI MILES-LaGRANGE
UNITED STATES DISTRICT JUDGE